

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 595 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes.
 2. To be referred to the Reporter or not? Yes. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
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HARIKRISHNA CHANDULAL TRIVEDI

Versus

SARDAR PATEL UNIVERSITY

Appearance:

MR DC DAVE for Petitioner
MR NV ANJARIA for Respondent No. 1 & 2.
MR GM JOSHI for respondent no. 3 and 4.
MS HARSHA DEWANI for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 01/02/2000

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 8-12-1997 by the respondent no. 5 - State of Gujarat and for a direction to the respondents no. 1 and 2 to carry out the process of

calculation of votes de-novo after declaring the said disputed ballot paper, appearing at Exh. 'A' to the petition, as invalid and void.

2. The petitioner is the head of the Chemistry Department in the Sardar Patel University - respondent no. 1. The petitioner being the head of the Chemistry Department of the respondent no. 1 has been designated as Ex-Officio Member of the Senate of the Respondent No. 1 - Sardar Patel University.

3. The petitioner along with the respondents no. 3 and 4 contested election of Syndicate of the respondent no. 1 which was scheduled on 29-3-1997. In all 113 voters participated in the election and out of them three votes were declared as invalid. 110 votes were found as valid votes and they were calculated on the preferential system of voting. Statute 128 of the Sardar Patel University, requires to determine, in first place, the quota of first preference, which the candidates contesting the said election were required to muster. Accordingly, as per formula evolved for the purpose of determining the said quota, said 110 votes which were declared valid votes for counting, were divided by the figure of 3 and 37 votes were required as first preference votes for declaration as elected. The respondent no. 3 got 47 votes first preference votes. While the petitioner got 35 first preference and the respondent no. 4 got 28 first preference votes and the respondent no. 3 was declared as elected to the syndicate of the respondent no. 1 as a member thereof. Subsequent to the aforesaid, the proceeding for the second round of counting for the purpose of determining as to who is to be declared as elected between the petitioner and the respondent no. 4, as per the formula evolved for preferential system of voting, number of surplus votes standing to the credit of the respondent no. 3, being the elected candidate, were required to be determined in the first place. As the respondent no. 3 secured in all 47 first preference votes as against quota of 37 votes, 10 votes were declared as surplus votes. It was found that out of said 47 preference votes in all 7 votes other than first preference awarded to the respondent no. 3 as a result thereof, the said 7 votes were declared nontransferable votes. 40 ballots papers out of said 47 votes were having second preference awarded to either the petitioner or the respondent no. 4, the same came to be declared as transferable votes to be taken into consideration for the purpose of proceeding with the counting of second preference votes. It was found that 35 ballots out of 40 transferable votes were

having second preference were awarded to the respondent no. 4 and 5 ballot papers having second preference allocated to the petitioner. The value of 35 preference votes given to the respondent no. 4 as well as value of 5 preference votes awarded to the petitioner were to be determined. Thus, the value of second preference votes was considered in the following manner.

"Total number of surplus votes = 10 multiplied by number of second preference votes found to be transferable to respondent no. 4 (35) divided by total number of transferable votes (40) = 8.75, being the value of transferable votes of respondent no. 4.

$$10 \times 35 = 8.75$$

Total number of surplus votes = 10 multiplied by number of second preference votes found to be transferable to the petitioner (5) divided by total number of transferable votes (40) = 1.25, being the value of transferable votes of the petitioner.

$$10 \times 5 = 1.25$$

40

4. The value of 8.5. transferable second preference votes of the respondent no. 4 was required to be added to the figure of first preference votes secured by the respondent no. 4 and as a result thereof, the total tally of the respondent no. 4 upon addition of the said value of 8.75 came to the tune of 36.75. As against this, total total tally of the petitioner, upon addition of the said value of 1.25 to the total second preference votes secured by the petitioner came to the tune of 36.25 votes. Thus, the respondent no. 4 was also declared as successful candidate.

5. Learned counsel for the petitioner challenged the votes shown at exh. A on page 46 wherein the respondent no. 3 was given a vote by placing "1" which is required standard alone under Statute 145. But this vote has been treated as a valid vote though no. "1" is not in standing position which is slanting at about 70 to 80 degree. This vote given to the respondent no. 3 should be declared as an invalid vote. Result of the respondent no. 3 will not be affected even this vote is declared as an invalid vote.

6. The petitioner raised objection before the authority concerned and the objections were submitted to the Vice Chancellor that, that vote should be considered as a valid vote but it was considered as valid. Then the petitioner filed an appeal before the the State Government u/s 39 of the Sardar Patel University Act. The Deputy Secretary, Education Department, State of Gujarat, considered the appeal of the petitioner and ultimately the appeal of the petitioner was dismissed.

7. The parties were called personally for making their submissions on 11-6-1997, 19-7-1997 and 7-8-1997. In the written submissions tendered on behalf of the petitioner the objection with regard to ballot paper has been raised to the effect that in the symbol "/" is made, instead of figure "1". He has submitted that as per the instructions contained in Statute 142 and 145 of the University, the symbol "1" must be straight and in place of which the symbol of a slash viz. "/" cannot be approved. If the vote casted under this ballot paper is not considered as valid vote, then in that case, upon being a change in the second preference vote counting, the respondent no. 4 cannot be declared as elected.

8. Learned counsel for the respondent University contended that the handwriting of the person are being changed and it cannot be accepted to have the handwriting just like copying the book. The handwriting in slanting position cannot be treated as consensus. The objection raised by the petitioner at the relevant time was placed before the Vice Chancellor of the respondent University u/s 129 (B) of the Sardar Patel University Act and he had taken into consideration the instructions for treating the ballot paper as valid or invalid and without prejudice against the petitioner in any manner the Vice Chancellor accepted the ballot paper as valid one. It was also contended that after giving first preference votes, the petitioner had not raised any objection at the appropriate time to take into consideration the prescribed norms in this behalf to consider the ballot paper as valid or invalid. After considering the material on record, the State Government found that the method and manner of handwriting of the voters could be different and each of the ballot papers is required to be taken into account and therefore the submissions made on behalf of the petitioner that the disputed ballot paper containing slanting "1" the vote was not found just and proper and to be accepted and the vote was to be considered as invalid vote is not sustainable.

9. Learned counsel for the petitioner contended that

the Rules required that the vote should be given in specified method and manner as contained in Statute 145 as number "1" is written on the vote in favour of the respondent no. 3 is not in standing position but it is in slanting position. Just like mark given is tick mark. This vote ought to have been declared as invalid vote by both the authorities below. Both the authorities below have committed an error on the face of the record in considering and declaring this vote as invalid vote. He has also relied on the decision of the Supreme Court in the case of Era Sezhiyan Vs. T.R. Balu and others, reported in AIR 1990 SC 838, wherein ball-point pen was given to mark ballot paper in blue ink and that ball-point pen was of blue ink. But on particular ballot paper the voter marked the ballot paper by another ball-pen which was not in blue colour and that ballot paper was considered as an invalid by the Apex Court. In the similar manner, he contended that in present case, the voter is required to mark the ballot paper in the mode and manner prescribed thereof by the Statute. In the Statute it is clearly mentioned that figure "1" is not made in standing position, it can be rejected. As such, the decision taken by both the authorities below is erroneous on the face of the record and acceptance of the ballot paper as valid one is also illegal. On the contrary, it is contended that the finding of fact recorded by the authority concerned as to whether the mark on the ballot paper is one or not, this Court under Article 226 of the Constitution of India cannot disturb the finding of fact recorded by the authorities concerned. In this respect learned counsel for the petitioner relied on the decision of the Apex Court in the case of Hari Vishnu Kamath Vs. Ahmad Ishaque and others, reported in AIR 1995 SC 233, wherein it has been held as under :

"With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established (i) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or falls to exercise it, (ii) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (iii) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One

consequences of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject - matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari."

10. Both the authorities below have recorded the findings of fact. That mark made on the ballot paper is "1" and it cannot be considered otherwise or in any other manner. The finding cannot be disturbed or interfered by this Court under Article 226 of the Constitution of India.

11. I have considered the submissions made on behalf of the parties. In this case, the mark made on the ballot paper Annexure-A is in slanting position and it is not in straight position and standing position. But both the authorities have considered the fact that due to placing of the ballot paper or due to the age of the voter mark in slanting manner can be considered as one and declared ballot paper as valid one. As it would be difficult for this Court to disturb these findings in view of the fact that the State Government has considered this fact that it can be in slanting position due to placing of the ballot paper, due to age of the voter and handwriting of the voter is concerned. This Court should not interfere to and hold otherwise. It is true that mark on the ballot paper is in slanting position which is 70 to 80 years degree. As both the authorities below have held that this mark in slanting position can be considered as one in the peculiar facts and circumstances of the case prevailing in the department or voters concerned. I do not find any merit in the contentions made on behalf of the petitioner to hold otherwise.

12. The next contention of the learned counsel for the petitioner is that another ballot paper Exh. F has been considered as invalid by the Returning Officer, though there is no mistake except the word "1" has been made thick by two lines and in case that ballot paper has been declared invalid then the present ballot paper Annexure-A should also be declared as invalid. In case, if any ballot paper has been rejected wrongly this Court cannot give any parity in this respect. Accordingly, the

contention of the learned counsel for the petitioner that the finding is perverse is not sustainable in the eye of law, in my opinion.

13. Learned counsel for the petitioner has not pressed second point with regard to transferable vote raised in para 19 (A) of the petition.

14. I do not find any merit in this petition and accordingly this petition is liable to be dismissed and the same is dismissed. Rule is discharged with no order as to costs.

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/JVSatwara/